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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

KUBELIK, ANNE R

ART UNIT

PAPER NUMBER

1638

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DELIVERY MODE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-7, 16-22, 29, 31-37 and 45-51, drawn to a method comprising blending seed of a first transgenic seed crop with seed of a second transgenic seed crop, wherein the first and second seed crops are pesticidal to the same target pest to make a mixture comprising about 0% to about 100% of each crop.

Group II, claim(s) 8-15, 23-28, 30, 38-44 and 52-58, drawn to a method comprising blending seed of a first transgenic seed crop with seed of a second transgenic seed crop, wherein the first and second seed crops are pesticidal to different target pests to make a mixture comprising about 0% to about 100% of each crop.

The inventions listed as Groups I-II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The technical feature linking Groups I-II appears to be blending two sets of transgenic seed pesticidal to pests to make a mixture comprising about 0% to about 100% of each crop.

However, Pershing et al (2003, US 6,551,962) teach a method comprising “blending” “about 100%” of seed of a plant transformed with a nucleic acid encoding a Cry3Bb or Cry33/34 protein. Thus, claim 1 among others, is not novel.

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Therefore, the technical feature linking Groups I-II is not special and the Groups are not so linked under PCR Rule 13.1.

Applicant is advised that for the reply to this requirement to be complete, it must include (i) an election of an invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out the supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be present at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of the right petition under 37 CFR 1.144.

Should Applicant traverse on the ground that the inventions are not patently distinct, Applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a refection under 35 U.S.C. 103(a) of the other invention(s).

If claims are added after the election, applicant must indicate which of these claims are readable on the elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the

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application. Any amendment of inventorship must be accompanied by a petition under 37

CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne R. Kubelik, Ph.D., whose telephone number is (571) 272-0801. The examiner can normally be reached Monday through Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg, can be reached at (571) 272-0975.

The central fax number for official correspondence is (571) 273-8300.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

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September 16, 2008

/Anne R. Kubelik/

Primary Examiner, Art Unit 1638